

DEBTOR FREQUENTLY ASKED QUESTIONS

What is a 341 meeting?

The meeting of creditors is a hearing **all debtors must attend** in any bankruptcy proceeding. It is held outside of the presence of the judge and usually occurs between 20 and 40 days after the filing of the petition. In Chapter 7, 12, and 13 cases, the trustee assigned to the case conducts the meeting. In a Chapter 11 case, a representative of the United States Trustee's Office conducts the meeting.

The meeting permits the trustee or the representative of the U.S. Trustee to review the debtor's petition and schedules face-to-face with the debtor. The debtor is required to answer questions under penalty of perjury (swearing or affirming to tell the truth) about the debtor's conduct, property, liabilities, financial condition, and any other matter that may affect the administration of the case or the debtor's right to discharge. In addition, the trustee or U.S. Trustee's representative will ask questions to ensure that the debtor understands the bankruptcy process.

The meeting is referred to as a "meeting of creditors" because creditors are notified that they may attend and ask the debtor questions pertaining to assets or any other matter pertinent to the administration of the case. It is also referred to as a "341 meeting" because it is mandated by Section 341 of the Bankruptcy Code. Creditors are not required to attend these meetings and do not waive any rights if they do not attend. The meeting usually lasts only about ten to fifteen minutes and may be continued if the trustee or U.S. Trustee's representative is not satisfied with the information presented. If a continuance (postponement) of a 341 meeting is sought by a debtor/debtors, the trustee assigned to the case must be contacted. A motion to continue the meeting of creditors should not be filed with the Court unless the trustee has refused a requested continuance.

If the debtor fails to appear and provide the information requested, the trustee or U.S. Trustee's representative may request that the case be dismissed, or may seek other relief against the debtor for failure to cooperate. If the case involves spouses filing jointly, **both spouses must appear** at the meeting of creditors.

Do I need an Attorney to File Bankruptcy? What if I cannot afford one?

While it is possible to file a bankruptcy case "pro se", that is, without the assistance of an attorney, it is extremely difficult to do so successfully. Hiring a competent attorney is highly recommended. For information about referral programs, please [see our website](#) or contact your local bar association.

What is an Automatic Stay?

An automatic stay is an injunction that automatically stops lawsuits, foreclosures, garnishments and all collection activity against the debtor the moment a bankruptcy petition is filed.

What are the consequences of filing for bankruptcy?

Depending on a debtor's financial situation and reasons for filing, the consequences of filing for bankruptcy protection may outweigh the benefits. Those considering bankruptcy should be aware of the following:

- Filing for bankruptcy generally is not free;

- Not all debts are dischargeable. An example is that secured creditors retain some rights which may permit them to seize property, even after a discharge is granted. Spousal and child support obligations and most tax debts are not dischargeable.

- Within 14 days of the filing of a bankruptcy petition, schedules of the debtor's assets and liabilities must be

filed. Failure to timely file the appropriate schedules will result in dismissal of the bankruptcy. Similarly, the debtor must appear for examination at a meeting of creditors, and failure to appear can result in a dismissal or an order compelling the debtor to appear.

If a case is not dismissed and a discharge is entered by the Court, the debtor is prohibited from being granted another discharge for a period of time. See "How Soon after I get my discharge can I file for bankruptcy again?".

Fraudulent information or acts by the debtor are grounds for denial of a discharge and may be punishable as a criminal offense.

Credit Reports. How long does the bankruptcy stay on? How can I get an Error Corrected; and How Do I get the Bankruptcy Removed from my Credit Report?

The Bankruptcy Court has no jurisdiction over credit reporting agencies. **The Fair Credit Reporting Act, 6 U.S.C. Section 605**, is the law that controls credit reporting agencies. The law states that credit reporting agencies may not report a bankruptcy on a person's credit report after ten years from the date the bankruptcy case is filed. Other bad credit information is removed after seven years. The larger credit reporting agencies belong to an organization called the Associated Credit Bureaus. The policy of the Associated Credit Bureaus is to remove Chapter 11 and Chapter 13 cases from the credit report after seven years to encourage debtors to file under these chapters.

You may contact the **Federal Trade Commission, Bureau of Consumer Protection**, Education Division, Washington, DC 20580. The telephone number is (202) 326-2222. That office can provide further information on reestablishing credit and addressing credit problems. For information on credit practices, please contact (202) 326-3224.

What is Credit Counseling?

Credit counseling is the counseling an individual debtor must obtain before filing bankruptcy. The counseling must be obtained, within 180 days before the debtor files the petition, from a credit counselor authorized by the United States Trustee. It is required for **all** individual debtors with exceptions that rarely apply. When you complete your credit counseling from a credit counselor, the credit counselor will issue a certificate that must be filed with the Bankruptcy Court. If you are filing jointly with your spouse, both of you must complete credit counseling. The failure to timely file a properly issued credit counseling certificate will result in the dismissal of your bankruptcy case in almost all circumstances. The credit counselor may develop a proposed budget and repayment plan if it appears that you could afford such a plan (if one is prepared, it is to be filed along with the certificate).

Please see the [Court's website](#) for a more detailed discussion and for the most recent information on approved credit counseling providers.

What is Financial Management?

Personal Financial Management Instruction is the instruction that you obtain after you file bankruptcy from an agency authorized by the United States Trustee. It is only required for Chapter 7 and 13 individual debtors. Once you complete the instruction you are to file Official Form 423 and if a certificate was provided, it should be attached. In Chapter 7 cases, the certificate of completion of a course in financial management must be filed within 45 days of the first scheduled 11 U.S.C. § 341 Meeting of Creditors. In Chapter 13 cases, the certificate of course completion is due prior to the completion of all plan payments so that a discharge may be obtained. The failure to timely file the certificate of course completion in either a Chapter 7 or Chapter 13 case could result in your case being closed without the issuance of a discharge. If this happens, you will need to pay a filing fee to reopen the case to file the certificate so that a discharge may be obtained.

Please visit the [Court's website](#) for the most recent information on approved personal financial management instructional course providers.

What is a Creditor Matrix?

It is a list of the creditors in your case which must be filed in the proper format so that it can be used by the Court's automated noticing system. Any matrices which do not conform to requirements will be considered deficient and will slow the progress of your case, and may even lead to its dismissal. Please see the [Court's website](#) for the rules and an example of a creditor mailing matrix.

How can I change or correct information in the petition, statements, and schedules I have filed?

The information contained in your petition, statements, and schedules is submitted under penalty of perjury. Accordingly, one who intentionally submits such information that is inaccurate or misleading may have committed a serious crime. Therefore, you must be certain this information is correct when you sign these documents. If you later discover something is inaccurate, you must correct the documents by filing an amendment with the Clerk's Office. If a schedule is amended, an appropriate amended schedule must be filed showing the correction, along with an Amended Summary of Schedules. If you are adding a creditor or changing a creditor's address, you must also submit a document showing only the changes (see information on [Court's website](#) for mailing matrix instructions). A fee of \$30.00 must be paid to amend schedules of creditors or lists of creditors for the purpose of adding, deleting, changing the amount of a debt or reclassifying a debt on the debtor's schedules. The debtor must include the debtor's full taxpayer identification number in the notice mailed to the added creditor, but **only include** the last 4 digits of the identification number in the notice or certificate of service filed with the Court. The debtor must give notice to the creditor(s) impacted, changed or added by the amendments by mailing them a copy of the Notice of meeting of Creditors. A Certificate of Service evidencing such must be filed with the court. See Local Bankruptcy Rule 1009-1 on the [Court's website](#). See Frequently Asked Questions for information about certificates of service.

What is a Discharge?

A discharge is a release of a debtor from personal liability for certain dischargeable debts set forth in the Bankruptcy Code. (A discharge releases a debtor from personal liability for certain debts known as dischargeable debts and prevents the creditors owed those debts from taking any action against the debtor to collect the debts as a personal obligation, but does not discharge enforcement of a lien or other encumbrance on property of the debtor. The discharge also prohibits creditors from communicating with the debtor regarding the debt, including telephone calls, letters, and personal contact.)

What is the means test?

The means test (Official Form 122A-2) is used in cases where the Chapter 7 individual debtor's(s') current monthly income exceeds the state's median family income. It is used to determine if a debtor has the ability to repay a minimum level of general unsecured debt after the payment of allowable monthly expenses. If the means test shows a debtor has such an ability to repay, there is a "presumption of abuse." In other words, if the debtor(s) receive(s) a Chapter 7 discharge, this would be an abuse of the bankruptcy process, because the debtor(s) may have the ability to repay debts outside of bankruptcy or through a Chapter 13 repayment plan over time. The analysis involves application of certain IRS guidelines for expenses in determining the ability to repay as well as a review of income from the previous six months to determine if the debtor(s) is/are above the median income for the state where they reside. The links to the IRS guidelines and median income information are found on the [Court's website](#).

If I file for bankruptcy, will it stop an eviction?

Sections 362(b)(22), 362(b)(23), 362(l), and 362(m) of the Bankruptcy Code are some of the provisions that bear on the question of whether the automatic stay will apply to stop an eviction. However, the question is a complicated legal question, and the Clerk's Office is prohibited by federal statute from providing legal advice. If you have any questions on how a bankruptcy filing affects enforcement of an eviction proceeding, please contact an attorney.

What if my case is dismissed?

A dismissal order ends the case. The automatic stay is terminated, and, if a discharge has not been entered, creditors may take action to collect on their debts.

Dismissal of a case has important consequences for cases filed on or after October 17, 2005. Pursuant to 11 U.S.C. Section 362(c), the automatic stay protection in a case filed within the year of the dismissal of a prior case is limited or may not exist if two or more cases have been dismissed.

My case was dismissed because I failed to pay all of the installments of the filing fee. Can I file a new bankruptcy case? If so, can I pay the new filing fee in installments?

It depends. If your case was dismissed for failure to pay all of the installments of the filing fee, you are barred from payment of filing fees in installments in any subsequently filed case. In addition, the order dismissing your previous case may have placed other restrictions such as a 180 day bar to prevent you from filing a new case.

What is a Reaffirmation Agreement?

A reaffirmation agreement is an agreement between the debtor and a creditor by which a debtor becomes legally obligated to pay all or a portion of an otherwise dischargeable debt. A debtor who signs a reaffirmation agreement has 60 days after the agreement is filed, or until the discharge date, whichever occurs later, to change his mind and inform the creditor that the agreement is rescinded. Debtors entering into a reaffirmation agreement without counsel representing them will need to attend a hearing before a Judge to determine if the agreement will be valid.

Since a reaffirmation agreement takes away some of the effectiveness of your discharge, you are strongly advised to consult legal counsel before agreeing to a reaffirmation of a debt.

Please review the Reaffirmation Documents, Official Forms 2400A-C, on the [Court's website](#). The forms contain a lot of useful information about reaffirmation agreements.

What is a Motion for Relief From Stay?

Under certain circumstances, a creditor or a party seeking to continue an action outside of the bankruptcy will file a motion for relief from stay. Typically, the creditor is seeking to foreclose on property, sell it and apply the proceeds to the debt. The motions are most common in cases where there is no value in the property for the bankruptcy trustee to administer in excess of valid liens and claims of exemption. If you want to object to a motion for relief from stay, you must do so in writing by filing your objection with the Court on or before the objection date listed in the notice sent to you and appearing at the preliminary hearing scheduled in that notice. Do not simply appear on the hearing date to state your objection, because relief will be granted and the hearing may not be held unless an objection has been filed. If a motion for relief from stay is filed in your case, you should contact a bankruptcy attorney.

What can I do if a creditor keeps trying to collect money after I have filed a bankruptcy?

You should immediately contact your bankruptcy attorney, and ask him or her to take appropriate action on your behalf. If you do not have an attorney, you can write the creditor and provide them your case name and number or a copy of your petition and the notice of the commencement of the case. If you obtained a discharge already, also

provide the creditor a copy of your discharge order. If the collection efforts continue, you may be entitled to take further legal action, and you will be well advised to seek representation by a qualified attorney (whose fees may be recoverable from the creditor if the creditor, with knowledge of the case, is indeed violating the automatic stay or the discharge injunction).

What if a creditor tries to collect money after I get a discharge?

The best thing to do will depend upon the specific facts of your case. If you have questions, contact an attorney. Make sure the creditor is aware that you received a discharge by mailing a copy of the discharge order to the creditor.

In general, it is a violation of the discharge injunction if, after you have provided notice of the discharge, the creditor does not cease collection efforts or commences or continues to pursue legal proceedings against you. You will be well advised to seek representation by a qualified attorney (whose fees may be recoverable from the creditor if the creditor, with knowledge of the case, is indeed violating the discharge injunction).

What services can a "Bankruptcy Petition Preparer" provide?

A "bankruptcy petition preparer" is a person or firm which is not authorized to act as an attorney, but who, acting as a typing service, fills out your bankruptcy petition and related forms for a fee. Bankruptcy petition preparers can only type the forms. They cannot advise you regarding what forms are required and what ought to go on the forms as that would constitute the unauthorized practice of law. They may not give you legal advice. Their services are subject to restrictions and limitations under the Bankruptcy Code. Bankruptcy petition preparers sign all documents they prepare for you, but they are not authorized to sign any document on your behalf. Therefore, you must also sign all documents yourself if they require your signature. Bankruptcy petition preparers are prohibited by law from collecting or receiving any Court fees connected with your case. Consequently, if you use a petition preparer you are required to pay all Court fees directly to the Court, including the filing fee and any other fees. You should immediately notify the United States Trustee and any trustee appointed in your case if you think a bankruptcy petition preparer fails to comply with the law.

How can I get a case reopened?

You may file a Motion to Reopen stating the grounds for reopening the case, and pay the appropriate filing fee in full.

A filing fee is not required when the purpose of reopening the case is to enforce the discharge. The Judge will determine whether to reopen the case and may hold a hearing.

How do I get my case dismissed?

If you change your mind about your need for a bankruptcy discharge, you may seek to have your case dismissed.

Typically, you must file a motion with the Court and give notice and an opportunity to object to all creditors and other parties in interest. If no objections are filed, the Court may dismiss the case.

Will the Judge advise me of my options during the bankruptcy case?

No. The Court cannot act as your counsel.

Why do I have to pay a fee to file for bankruptcy? Can the Court waive the fee?

Federal law, 28 U.S.C. §1930, requires a fee to file a bankruptcy petition. If an individual cannot pay the full fee at the time of filing, you may apply to pay the fee in installments. A form, which is available from the bankruptcy clerk's office, must be completed to make that application. If your application to pay in installments is approved, you will be permitted to complete paying the fee over the course of four months. See Fed.R.Bankr.P. 1006.

Chapter 7 debtors in certain specific circumstances may request a waiver of the initial filing fee upon showing that they meet the criteria in 28 U.S.C. § 1930. If the Court denies the request, you will be required to pay the fee in full or in installments.

Can I pay my filing fee by check or credit card?

No. The only acceptable forms for paying fees are money orders, cashiers' checks, or cash.

If my case gets dismissed, or I change my mind about filing, can I get my filing fee refunded?

No. By statute, filing fees cannot be refunded.

When am I under bankruptcy protection?

You are under bankruptcy protection as soon as your petition is filed.

I cannot download your forms. What can I do?

Come to the Bankruptcy Court during operating hours and you can receive a free copy of the bankruptcy case opening forms .

Who has access to my bankruptcy file?

All of the Court's files are public records. However, all petitions filed now contain only the last four digits of a debtor's Social Security number. The debtor then submits to the Court a Statement of Your Social Security Numbers (Official Form 121) which contains the entire number, for the Court's reference. However, this form is not part of the public record.

(If debtors inadvertently add their Social Security Number to other documents, the number will appear in the public records).

Will all my creditors be notified of my discharge?

All creditors who were listed in your schedules and on your creditors' matrix or added to your schedules and creditors' matrix by amendment will receive notice of your discharge.

When is my case complete?

Your case is complete when the case has been closed and there is no separate order that is issued. You should expect that a case will be closed within a reasonable time after a discharge issues in no asset cases or when the trustee files the final distribution report in asset cases.

How soon after I get my discharge can I file for bankruptcy again?

The Court cannot grant a discharge to an individual Chapter 7 or 11 debtor if he or she has been granted a discharge in a Chapter 7 or 11 case in which the petition was filed within eight years of the date of filing the current petition. The Court cannot grant a Chapter 13 debtor a discharge if the debtor received a prior discharge in a prior Chapter 7, 11 or 12 case filed four years before filing the current case or in a prior Chapter 13 case filed two years before filing the current case. It is strongly suggested that you seek legal advice from a competent bankruptcy attorney on this matter.